

THE PRESIDENT: Delegate Marion.

DELEGATE MARION: Delegate Weidemeyer, you asked several questions, but in posing the question you stated the language incorrectly as it would read. It would not read "matters subject to rule" but "matters enumerated in this section".

It is designed to continue what we had as approved in the first and second readings, a concurrent power in the Court of Appeals to act by rule, and the General Assembly to act by law. The power for the Court of Appeals to act by rule is contained in the present Constitution, and, in effect, the same situation, the concurrent rule-making power, is provided in the present Constitution.

THE PRESIDENT: Delegate Weidemeyer.

DELEGATE WEIDEMEYER: As you say, the General Assembly shall, by law, have concurrent power to regulate matters subject to rule, enumerated in this section. The rule-making power is given by the first sentence to the Court of Appeals and to regulate that rule-making power would mean that the General Assembly would have no more power than to say when they had to do it or if they would have to put it up in a book, in brown cover, black cover, et cetera.

That is all I see, that you have come here and, as I see it, it has stripped the understanding that we had that there was to be that concurrent power.

THE PRESIDENT: Delegate Weidemeyer, I think you have inadvertently, but nevertheless incorrectly, stated the results of the discussion in the Committee of the Whole. It was, as the Chair recalls it, and certainly as this section provides, both before and after the Bothe Amendment, clearly intended that in the areas set out in this section, there was to be concurrent power, except in those instances elsewhere where there is a specific provision for the Court of Appeals to act by rule, in which event, there would be no concurrent power by the General Assembly as, for instance, the power of the Court of Appeals to prescribe by rule for the method of selecting lawyer members of nominating commissions or for secret ballots for lawyers on retention of judges.

Some of those matters are specifically designated to be prescribed by rule and not to be subject to the concurrent power of the legislature to prescribe by law. There

are a very limited number of those cases, but they do exist.

Delegate Weidemeyer.

DELEGATE WEIDEMEYER: Thank you, Mr. President.

THE PRESIDENT: Is there any further discussion?

Delegate Burdette.

DELEGATE BURDETTE: It seems to me that the problem here that Delegate Weidemeyer has identified, but it is very hard to follow from this language, is in lines 31 and 32.

As I understand the language, the General Assembly by law shall have concurrent power. That strikes me as quite different from saying in the constitution that the General Assembly shall have concurrent power. It says that the General Assembly can pass a law. Maybe it comes to the same thing, but it is certainly not a constitutional power. I wonder if the effect of the amendment is not to remove the so-called concurrent rule-making power from its constitutional status?

THE PRESIDENT: Delegate Marion.

DELEGATE MARION: Delegate Burdette, the amendment is certainly not designed to have that effect. The sentence has posed problems before.

This language was drafted by Mr. Adkins, the staff advisor for the Judicial Branch Committee. It is entirely possible that it does not say as well as possible what we intend, but the intention is to make no substantive change, but to clarify the language of the second sentence of this section, and to avoid the difficulty posed by the words "provide" and "prescribe", neither one of which seems to fit very aptly when this sentence is read.

THE PRESIDENT: Delegate Burdette.

DELEGATE BURDETTE: If we were trying to save the constitutional status of the concurrent power, we would probably need to get the power somewhere more closely to the General Assembly.

Now, I wonder, that is, what we are trying to say is the General Assembly acting by law. I frankly think that the amendment can be construed to reverse the language which is here.

THE PRESIDENT: Delegate Marion.

DELEGATE MARION: Is what you are suggesting that the words, "by law", be